

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

HONORE WOLFE,

Plaintiff,

vs.

**AUSTIN ZENKOVICH, SUDBECK
TRUCKING, INC., DOES I-V, and ROES
CORPORATIONS IV-X,**

Defendants.

4:22CV3265

ORDER TO SHOW CAUSE

This matter is before the Court *sua sponte* after review of the pleadings. The court has an independent obligation to determine whether subject matter jurisdiction exists in each case. See *Sac & Fox Tribe of the Mississippi in Iowa, Election Bd. v. Bureau of Indian Affs.*, 439 F.3d 832, 836 (8th Cir. 2006). “It is a fundamental precept that federal courts are courts of limited jurisdiction. The limits upon federal jurisdiction, whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded.” *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Diversity jurisdiction is limited to cases in which the “controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different States[.]” See 28 U.S.C. § 1332(a). “When a case is in federal court because it has been removed there by the defendant and it turns out the district court lacks subject matter jurisdiction to decide the claims, ‘the case shall be remanded.’” *Schumacher v. SC Data Ctr., Inc.*, 33 F.4th 504, 514 (8th Cir. 2022) (quoting 28 U.S.C. § 1447(c)).

Defendants, Austin Zenkovich and Sudbeck Trucking, Inc., removed this action from Thurston County, Nebraska, on December 16, 2022, invoking this court’s diversity jurisdiction under 28 U.S.C. § 1332(a). ([Filing No. 1](#)). According to their Notice of Removal, Defendants assert complete diversity of citizenship exists “because no Defendant is a citizen of the same state as Plaintiff[]; Sudbeck is incorporated and has its principal place of business in Iowa, Mr. Zenkovich resides in Spencer, Iowa, and Plaintiff resides in Winnebago, Nebraska.” ([Filing No. 1 at p. 2](#)). Defendants rely on Plaintiff’s Amended Complaint to establish the citizenship of the parties. However, in both Plaintiff’s original complaint filed on November 18, 2022, ([Filing No. 1-2 at p. 1](#)) and in her First Amended Complaint filed on November 22, 2022, ([Filing No. 1-2 at p. 16](#)), Plaintiff alleges she “is an individual residing in Sioux City, Iowa.” Although Plaintiff

alleges the conduct supporting her claims took place in Winnebago, Nebraska, Plaintiff did *not* allege she is a citizen or resident of Nebraska. ([Filing No. 1-2 at p. 16](#)). Therefore, on the record before the Court, complete diversity between the parties does not exist. Accordingly,

IT IS ORDERED that the defendants shall have until **March 29, 2023**, to show cause why this case should not be remanded to Thurston County District Court for lack of subject matter jurisdiction.

Dated this 15th day of March, 2023.

BY THE COURT:

s/Michael D. Nelson
United States Magistrate Judge